STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

August 30, 1991

ALL-COUNTY LETTER NO. 91-89

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY GAIN COORDINATORS

SUBJECT: MILLER V. CARLSON - IMPLEMENTATION OF PRELIMINARY INJUNCTION

On June 7, 1991 the United States District Court for the Northern District of California granted a preliminary injunction in the case of Miller v. Carlson. This letter provides you with instructions necessary for immediate implementation of this injunction. A copy of the June 7, 1991 court order (Enclosure I) is enclosed for your information.

On March 8, 1991, the Legal Aid Society of Alameda County (LASAC) filed a complaint against the State Department of Social Services (SDSS). The LASAC alleges that SDSS is violating the Family Support Act of 1988 by failing to provide child care to Aid to Families with Dependent Children (AFDC) recipients who are participating in an educational or training activity unless they are Greater Avenues for Independence (GAIN) Program participants. On April 18, 1991, plaintiffs filed a Motion for Preliminary Injunction requesting that SDSS be enjoined from failing to provide continued child care assistance to individuals who have been or will be terminated from GAIN due to program reductions.

Plaintiffs' Request for a Preliminary Injunction was filed and granted on June 7, 1991. On July 8, 1991, SDSS applied for a Stay of the Order, which, if granted, would have allowed us to not implement the Order pending a decision on our appeal. The Stay was denied. As a result, counties must reinstate child care assistance from June 7, 1991 forward to affected individuals who were or are satisfactorily participating in the same GAIN-approved education or training activity as when their child care benefits were terminated. A copy of the Order denying the Request for Stay is enclosed (Enclosure II). Please be assured that we are appealing the Preliminary Injunction. We have instructed, under separate cover, those counties immediately impacted by the Order to implement a notice process for those affected persons.

In the future, if it is necessary to remove individuals from GAIN prior to completion of an approved GAIN education or training activity due to cost reductions, counties will need to continue child care reimbursement payments if the individual continues to satisfactorily participate in the same activity. These child care reimbursement payments will be made up to the Family Support Act rate ceiling of 75th percentile rather than the GAIN regional market rate ceiling of 1.5 standard deviations above the mean market rate. We are preparing instructions on implementing cost reductions and Notice of Action (NOA) message language to be used when removing participants from GAIN due to cost reductions. These procedures will be issued under separate cover and are designed to minimize the impact of Miller implementation. Counties that anticipate having to remove participants from GAIN prior to receipt of the cost reduction instructions should contact their GAIN and Employment Services Operations Bureau analyst prior to taking any action.

In order to be potentially eligible for child care assistance under the terms of the preliminary injunction, affected individuals must meet all of the following:

1. Must be an AFDC recipient;

2. Must have children who meet eligibility requirements specified in Manual of Policies and Procedures 42-750.2:

    a. Child must be in the assistance unit or receiving federal foster care or SSI/SSP; AND

    b. Child must be under age 13 or have a physical or mental condition that requires special care or be under court supervision and meet AFDC age requirements;

3. Must have been involuntarily removed from a GAIN education or training activity solely as the result of cost reductions;

4. Must have been involuntarily removed from a GAIN activity before it was completed;

5. Must have been receiving GAIN-paid child care at the time of removal from GAIN;

6. Must be enrolled or, if attending, be satisfactorily participating in the same education or training activity to which he or she was assigned at the time of removal from GAIN. Participant must have needed and/or continue to need child care in order to attend the approved education or training activity; and

7. Must continue to satisfactorily participate in the approved GAIN education or training activity. Child care payments cannot exceed the 75th percentile of counties' regional market rates and will cease upon completion of the approved activity unless and until the participant is reinstated into the GAIN Program.

As condition for payment, child care arrangements must meet the following requirements:

1. Child care provider must have a license if required;

2. Exempt child care provider must be 18 years of age or older; and

3. Child care provider must be someone other than the child's parent, legal guardian, or member of the participant's assistance unit.

Upon reinstatement of child care for affected individuals, counties shall use reasonable methods for verification of child care expenses and satisfactory participation in the approved activity. Counties need to ensure that payments are made only for allowable child care expenses. For counties that have to continue child care payments, we have enclosed a Child Care Request Process and a Child Care Approval Checklist (Enclosure III). Counties may substitute their approval checklist for the state-developed version.

We have also developed NOA messages to approve or deny child care requests for Miller payments (Enclosure IV). Enclosure V contains reproducible copies of a revised "Your Hearing Rights" (TEMP MILLER 50A) and a "Rights and Responsibilities/Activity Agreement." Because of the small number of forms needed, we will not be stocking them in our warehouse. The TEMP Miller 50A and the "Rights and Responsibilities/Activity Agreement" will not be printed by the Department. Translations of these forms and the enclosed NOA messages will be issued as soon as available. Please add the "contact line" language (Enclosure VI) to the NOA messages until you receive the translated messages. We will be issuing the other NOA messages and instructions under separate cover as soon as possible.

TIME STUDY AND CLAIMING INSTRUCTIONS

Time Study Instructions

Caseworker time spent determining, authorizing, and computing child care payments for affected individuals who have had their child care benefits reinstated as a result of the Miller Preliminary Injunction, will be reported as GAIN Child Care Administration on the Employment Services Time Study (DFA 52). For those counties who use clerical and/or administrative staff to perform these activities, staff are to report time in accordance with the approved Annual Time Reporting Plan (ATRP).

Claiming Instructions

Administrative Costs

Counties are to report contractors' administrative time to Program Identification Number (PIN) 453155 Child Care Administration-Contracted Administration on the Direct Costs Input Schedule (DFA 325.1B).

Child Care Payments

Child care payments are to be reported to PIN 454118 Child Care Services-Payments on the DFA 325.1B.

Although we are not setting up separate claiming processes at this time, we are asking that counties track payments made under Miller.

If you have any questions concerning the information in this letter, please contact your GAIN and Employment Services Operations Bureau analyst at (916) 324-6962. Any questions regarding the Time Study and Claiming Instructions should be directed to Cindi Carleton of the Fiscal Policy and Procedures Bureau at (916) 324-2405.

Fred Miller for
DENNIS J. BOYLE
Deputy Director

Enclosures

cc: CWDA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH MILLER, JUDI COCHRAN, CATHLEEN WILLHITE, TANYA WARKE, ELIZABETH VAN DYKEN, JOANNE LEWIS, DEANNA THIEBERT, ALTHEA FOREMAN, on behalf of themselves and all other similarly situated,

Plaintiffs,

vs.

LONNIE CARLSON, in his official capacity as acting Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; THOMAS HAYES, in his official capacity as Director, California Department of Finance; LOUIS W. SULLIVAN, M.D., in his official capacity as Director, United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

No. C-91-0676 SAW

CLASS ACTION

ORDER GRANTING PRELIMINARY INJUNCTION

MEMORANDUM AND ORDER

I. BACKGROUND

Plaintiffs are California recipients of Aid to Families with Dependent Children ("AFDC") who need child care in order to participate in educational or training activities likely to provide them opportunities to secure employment and remove themselves from the welfare rolls. Defendants include the California Department of Social Services ("DSS"), the United

States Department of Health and Human Services ("HHS"), and the Directors of DSS, HHS, and the California Department of Finance.

At issue is a provision of the Family Support Act of 1988 which requires all states to guarantee child care to each recipient of AFDC who is participating satisfactorily in an education or training activity approved by the state. 42 U.S.C. § 602(g)(1)(A)(i)(II).

On March 3, 1991, plaintiffs filed a complaint for declaratory and injunctive relief, contending that defendants have violated their rights under the Family Support Act of 1988, 42 U.S.C. § 602(g)(1)(A)(i)(II)(Supp. 1990), by limiting the guarantee of child care exclusively to AFDC recipients enrolled in the state sponsored employment and training program known as Greater Avenues to Independence ("GAIN"). Defendants maintain that such a policy is in compliance with the Act.

On May 2, 1991, upon stipulation of the named parties and pursuant to this Court's Order, plaintiffs were certified as a class defined as "all recipients of Aid to Families with Dependent Children ("AFDC") in California who are participating in or will participate in training or educational activities outside of the state-sponsored employment and training program known as Greater Avenues to Independence ("GAIN")."[1]

Plaintiffs seek a preliminary injunction to enjoin

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[1] The certified class consists of all AFDC recipients who are or will be participating in educational or training activities outside of the GAIN program. However, preliminary relief is sought only for those members of the class who have been or will be terminated from GAIN.

defendants from failing to provide continued child care assistance to AFDC recipients who have been or will be terminated from GAIN, but who are continuing to participate satisfactorily in their state-approved educational or training activities.

A. The Family Support Act of 1988

Congress enacted the Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified in scattered sections of 42 U.S.C.), to "profoundly and fundamentally change the welfare system . . . [by creating] opportunities for recipients of Aid to Families with Dependent Children to further their education and job training and ultimately to remove themselves from the welfare rolls and gain self sufficiency through meaningful employment." 133 Cong. Rec. H1143 (daily ed. Dec. 15, 1987) (statement of Rep. Frost).

The Act requires each state, as a condition of participation in the AFDC program, to create a "Job Opportunities and Basic Skills" ("JOBS") program in order to provide training, education, and work opportunities for AFDC recipients. 42 U.S.C. § 681 et seq. (Supp. 1990). JOBS participants are entitled to support services necessary for participation, including costs of transportation and other work-related expenses. 42 U.S.C. § 602(g)(2) (Supp. 1990). GAIN is California's JOBS program. Cal. Welf. & Inst. Code § 11320 et seq. (West Supp. 1991).

A separate section of the Act requires the state to

"guarantee" child care

> for each individual [AFDC recipient] participating in an education and training activity (including participation in a program that meets the requirements of [the JOBS provision]) if the State agency approves the activity and determines that the individual is satisfactorily participating in the activity.

42 U.S.C. § 602(g)(1)(A)(i)(II) (Supp. 1990) (emphasis added). Plaintiffs argue (1) that on its face, this child care guarantee includes, but is not limited to, JOBS participants; (2) that the structure of the Family Support Act confirms that the child care guarantee is not limited to JOBS participants; and (3) that the legislative history of this provision demonstrates that it extends beyond JOBS.

Yet HHS has promulgated a regulation which requires states to offer child care assistance to AFDC recipients only if they "participate in an approved education or training activity under JOBS." [2] 45 C.F.R. § 255.2(a)(2) (emphasis added). In reliance on this regulation, California has denied child care to AFDC recipients who are participating satisfactorily in education or training programs but who, due to capped GAIN funds, have not been admitted into or have been terminated from GAIN. Both HHS and DSS defend their actions as consistent with the Family Support Act.

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[2] The regulation also provides that states may provide child care to AFDC recipients in non-JOBS areas (areas of the state which do not have a JOBS program). In California, there are no non-JOBS areas. California AFDC recipients who are unable to participate in GAIN are denied child care.

B. Plaintiffs' Predicament

Plaintiffs are recipients of AFDC who are currently participating or wish to participate in educational or training programs likely to lead to permanent employment. The named plaintiffs have chosen programs such as nursing, court reporting, and paralegal training. Their declarations indicate that lack of affordable child care is the primary obstacle to successful completion of their education and training.

Members of the class seeking preliminary injunctive relief were participating in training or education activities approved through the GAIN program until they were recently terminated from the program due to budget reductions. As a result, these plaintiffs lost their child care assistance. See Miller Decl.; Warke Decl.; Cochran Decl.; VanDyken Decl.; Willhite Decl.

In support of this motion, class members describe their inability to participate in training and educational activities without child care assistance.[3] Their declarations indicate that they cannot afford to pay for child care without sacrificing basic necessities. The AFDC grant, which is their only source of income, is often insufficient even for essentials.[4] This money must be stretched to pay for housing, food, utilities, clothing, transportation, personal hygiene and

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[3] Class members who seek preliminary relief do not challenge their termination from GAIN, but only defendants' failure to provide continued child care assistance.

[4] The AFDC grant for a parent and two children in California, for instance, is only $694 per month, or 74.6% of the federal poverty level. 56 Fed. Reg. 6859-6860 (1991).

miscellaneous necessities for the entire family. There is no money left to pay for child care. See Miller Decl., ¶¶ 7,11-14; Vandyken Decl., ¶ 8; Weary Decl. ¶¶ 7, 9; Warke Decl. ¶ 9; Willhite Decl. ¶¶ 9, 11; Cochran Decl. ¶¶ 8, 9; Preis Decl. ¶¶ 4, 5, 7; Patton Decl. ¶¶ 4, 5; Hruby Decl. ¶¶ 4, 5; Phipps Decl ¶¶ 4, 5, 7.

Plaintiffs now move for a preliminary injunction to enjoin defendants from failing to provide continued child care assistance to AFDC recipients who have been or will be terminated from GAIN, but who continue to participate satisfactorily in their approved educational or training activities. Their motion is well-taken.

II. STANDARD FOR ISSUING A PRELIMINARY INJUNCTION

To obtain a preliminary injunction in this circuit, the moving party must show either: (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips in its favor. United States v. Odessa Union Warehouse Co-Op, 833 F.2d 172, 174 (9th Cir. 1987); Benda v. Grand Lodge of Int'l Ass'n of Machinists & Aerospace Workers, 584 F.2d 308, 314-15 (9th Cir. 1978), cert. dismissed, 441 U.S. 937 (1979). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. Odessa, 833 F.2d at 174; Oakland Tribune, Inc. v. Chronicle Pub. Co., 762 F.2d 1374, 1376 (9th Cir. 1985).

Plaintiffs are entitled to a preliminary injunction under either formulation. As discussed below, plaintiffs demonstrate both a likelihood of success on the merits and the possibility of irreparable harm.

III. LIKELIHOOD OF SUCCESS ON THE MERITS

The dominant issue in this case is whether defendants' policy of providing child care only to GAIN participants violates plaintiffs' rights under the Family Support Act of 1988, 42 U.S.C. § 602(g)(1)(A)(i)(II).

A. Statutory Construction of the Family Support Act of 1988

1. Plain Language of Child Care Provision

The Family Support Act requires that states guarantee child care:

> for each individual [AFDC recipient] participating in an education and training activity (including participation in a program that meets the requirements of [the JOBS provisions]) if the State agency approves the activity and determines that the individual is satisfactorily participating in the activity.

42 U.S.C. § 602(g)(1)(A)(i)(II) (emphasis added).

In construing statutory provisions, courts must first consider the text of the statute. See Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979). It is well-settled that the plain language of a statute provides the best evidence of legislative intent. See INS v. Cardoza-Fonseca, 480 U.S. 421, 431-432 (1987); Chevron U.S.A. Inc., v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-3 (1984). Indeed, courts are bound to interpret a statute according to its plain language absent a clearly expressed legislative intent to the contrary.

See Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980); In re Co Petro Marketing Group, Inc., 680 F.2d 566, 570 (9th Cir. 1982).

As plaintiffs argue, the plain language of the Family Support Act provides that JOBS participants comprise one group of AFDC recipients entitled to child care. The use of the word "including" indicates Congress's intent to extend the child care guarantee beyond the JOBS program to all eligible AFDC recipients. Any other interpretation renders the word "including" meaningless. In construing a statute, courts are "obliged to give effect, if possible, to every word Congress used." Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979). A court "should avoid an interpretation of a statute that renders any part of it superfluous and does not give effect to all of the words used by Congress." Beisler v. Commissioner, 814 F.2d 1304, 1307 (9th Cir. 1987) (en banc).

The importance of the word "including" in the child care guarantee is underscored by comparing the child care provisions with those governing other support services. Congress explicitly limited transportation and other work-related expenses to participants in the JOBS program. See 42 U.S.C. § 602(g)(2) (Supp. 1990) (transportation and other work-related expenses shall be provided in "the case of any individual participating in [JOBS]"). Congress could similarly have limited the child care provisions to JOBS participants, but it did not. Where Congress employs particular language in one

section of a statute while omitting it in another section of the same Act, it is presumed that Congress acted intentionally and purposefully in the disparate inclusion or exclusion. Russello v. U.S., 464 U.S. 16, 23 (1983); see also Demarest v. Manspeaker, 111 S. Ct. 599 (1991). Therefore, the Court construes Congress's decision to define eligibility for child care more broadly than eligibility for other (JOBS-limited) services as intentional.

The child care provisions of the statute are not only broadly delineated, but also mandatory. The Family Support Act dictates that a state "must guarantee" child care for each eligible individual. 42 U.S.C. § 602(g)(1)(A)(i). Child care for all eligible individuals is therefore a requirement, not an option. Congress established only two criteria that an AFDC recipient must meet in order to qualify for child care: satisfactory participation in an educational or training activity, and approval of this activity by the state. Plaintiffs argue that the members of the class who seek preliminary relief, by definition, have met these criteria: they are participating satisfactorily in training or educational activities which the state already has approved.[5]

California has no authority to deny child care to plaintiffs to whom a federal statute guarantees such assistance. See Miller v. Youakim, 440 U.S. 125, 135 (1979) (state was without

[5] Because the class members seeking preliminary relief are former GAIN participants, their activities were approved by the state before they were terminated from the program.

authority to deny Foster Care benefits to children living with relatives where Congress mandated these benefits for "any" child eligible under federal requirements); Townsend v. Swank, 404 U.S. 282, 286 (1971) (where Congress requires that aid be furnished "to all eligible individuals," states and federal agencies are without authority to approve more narrow criteria). Therefore, plaintiffs present a strong case that the categorical exclusion of AFDC recipients in education or training activities from child care eligibility solely because they are not GAIN participants is without congressional authorization and thereby invalid. See also 45 C.F.R. § 233.10(a)(1)(ii) ("A State may . . . [p]rovide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage.") (emphasis added).

2. Structure of the Family Support Act

The plain meaning derived from the language of the Family Support Act is further supported by an examination of the structure of the Act. See K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.").

Title II of the Family Support Act, entitled "Job Opportunities and Basic Skills Program," contains the requirements for the JOBS program. Federal funding for JOBS is

capped and each state's share determined by the state's percentage of the total national AFDC caseload. 42 U.S.C. § 603(k)(1)-(3) (Supp. 1990). Funding for transportation and other work-related expenses, provided only to JOBS participants, is limited by this provision. 42 U.S.C. § 602(g)(2) (Supp. 1990).

By contrast, the child care provisions are found in Title III of the Act, entitled "Supportive Services for Families" (not, significantly, "Supportive Services for JOBS Families"), and funding for child care is uncapped. 42 U.S.C. § 602(g)(3) (Supp. 1990). States receive open-ended federal matching funds for child care provided to those who need it to accept employment or to remain employed, to JOBS participants, and to "each individual participating in an education and training activity . . . if the State agency approves the activity . . . ." 42 U.S.C. § 602 (g)(1)(A). Funding for child care, unlike JOBS funding, is therefore limited only by the number of eligible individuals.

Thus, plaintiffs make a well-founded argument that the structure of the Family Support Act manifests Congress's intent to establish child care as a guarantee separate from the JOBS program and available to each individual satisfactorily participating in an education or training activity approved by the state.

3. Congress's Rejection of Narrower Version of Child Care Guarantee Adopted by Defendants

Where, as here, the language of the statute is plain, "we

look to the legislative history to determine only whether there is a clearly expressed legislative intention contrary to that language, which would require us to question the strong presumption that Congress expresses its intent through the language it chooses." INS v. Cardoza-Fonseca, 480 U.S. 421, 432 n.12 (1987) (citations omitted). In this instance, the legislative history supports the statute's plain language and demonstrates Congress's intent to establish a child care guarantee for all AFDC recipients who are satisfactorily participating in an approved education or training activity.

Congress considered and rejected a Senate proposal which would have guaranteed child care only to JOBS participants. The Senate version provided:

> Each State agency shall guarantee child care . . . for each family with dependent children requiring such care, to the extent that such care is determined by the State agency to be necessary for an individual's participation in employment, education, and training activities under the program under Section 417 [JOBS].

134 Cong. Rec. S7638 (daily ed. June 13, 1988) (emphasis added).

In contrast, the proposed House version did not limit the child care guarantee to JOBS participants, but instead guaranteed care if it was needed for and

> directly related to an individual's participation in work, education, or training (including participation as a mandatory participant or volunteer in the program under section 416 [JOBS] and including participation in other work, education, or training by individuals who are not participating in such program by reason of exemptions . . .).

133 Cong. Rec. H11545 (daily ed. Dec. 16, 1987).

The Conference Committee thus was required to decide whether

the guarantee should be limited to JOBS participants or should apply to all participants in education or training.[6] The conference agreement provides in relevant part:

> The state agency must guarantee child care to the extent that is determined by the agency to be necessary for an individual's employment. The state agency must also guarantee child care for education and training activities (including participation in the JOBS program) if the state agency approves the activity and determines that the individual is satisfactorily participating in the activity.

H.R. Conf. Rep. No. 998, 100th Cong., 2nd Sess., 159, 160, reprinted in 1988 U.S. Code Cong. & Admin. News 2947-48.[7] The Conference Committee's version was enacted into law.[8]

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[6] For example, George Miller, Chairman of the House Select Committee on Children, Youth and Families, wrote to the Democratic members of the Conference Committee, urging them to adopt the broader version:

> The Senate bill guarantees child care for JOBS participants only, while the House proposal extends this guarantee to parents enrolled in education and job training activities, including JOBS. The distinction is important because many families who may be exempt from the JOBS program often decide to pursue similar activities on their own. Under the Senate bill, these families would not be guaranteed child care services. I would recommend that Congress adopt the House provision.

Letter from George Miller to Democratic Conferees, Aug. 1, 1988 (Exh. 1 to George Miller Decl.).

[7] Conference Committee reports provide strong evidence of congressional intent. See Planned Parenthood Federation Inc. v. Heckler, 712 F.2d 650, 657 n.36 (D.C. Cir. 1983).

[8] As Congress was considering the Conference Committee's report, Representative Miller expressed his understanding that the child care guarantee, consistent with its plain language, extends to all AFDC participants in education or training: "I am especially pleased that this legislation assures that all [AFDC] program participants, and especially those participating in the JOBS Program, will have access to child care." 134 Cong.

Plaintiffs argue that Congress's choice is explained by the great emphasis which it placed on child care throughout its deliberations concerning the Family Support Act. Congress recognized that "fundamental to any real welfare reform is access to child day care services. The lack of day care is a major barrier preventing welfare mothers from finding and keeping a job." 134 Cong. Rec. S7952 (daily ed. June 16, 1988) (statement of Sen. Sanford).[9]

As plaintiffs argue, the fact that Congress specifically rejected the Senate version of the bill, which would have limited the child care guarantee to JOBS participants, "strongly militates against a judgment that Congress intended a result that it expressly declined to enact." Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 200 (1974); see also INS, 480 U.S. at 442-443 ("Few principles of statutory construction are more compelling than the proposition that Congress does not intend subsilentio to enact statutory language that it has earlier discarded in favor of other language.") (quoting Nachman Corp. v. Pension Ben. Guaranty Corp., 446 U.S. 359, 392-393 (1980)).

B. Validity of Federal Regulation

In light of the mandate established by the child care provision of the Family Support Act, HHS regulation 45 C.F.R.

Rec. H9109 (daily ed. September 30, 1988) (emphasis added).

[9] See also statements of Congress members from 134 Cong. Rec. S7952 (daily ed. June 16, 1988) and 133 Cong. Rec. H11439 (daily ed. Dec. 15, 1987).

§ 255.2(a)(2) is likely invalid for limiting the guarantee of child care to JOBS program recipients. Section 255.2(a)(2) provides in relevant part:

> The State . . . Agency must guarantee child care . . . to the extent that such child care is necessary to permit an AFDC eligible family member to . . . [p]articipate in an approved education or training activity under JOBS . . .

(emphasis added). Plaintiffs present a strong case that federal defendants have adopted a limitation which Congress expressly rejected. See Vierra v. Winoa, 915 F.2d 1372, 1376 (9th Cir. 1990) (invalidating a regulation where the "legislative history reveals a clear expression of congressional intent that runs contrary to the regulation").

Federal defendants maintain that the challenged regulation is compatible with 42 U.S.C. § 602(g)(1)(A)(i)(II). HHS asserts, without authority, that the child care guarantee of the Family Support Act extends beyond the JOBS program only to the extent of including AFDC recipients who reside in non-JOBS areas. It claims to have complied with the statute by allowing states to provide child care assistance for AFDC recipients who reside in non-JOBS areas. See 45 C.F.R. § 255.2(a)(2).

The Court agrees with plaintiffs that this interpretation is inconsistent with the language of the Act which "guarantees" child care for "each individual" in an education or training activity. Had Congress intended to limit the child care guarantee to JOBS participants and to individuals in areas not

served by JOBS, it would have done so. It did not.[10]

Thus, the construction given to the child care guarantee by HHS is inconsistent, not only with the statute's language, but also with the statutory scheme and, most importantly, Congress's intent to overcome barriers to employment for all AFDC recipients. HHS's interpretation is not entitled to deference. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 n.9 (1984); National Labor Relations Board v. Brown, 380 U.S. 278, 291 (1965) (courts must not "rubber stamp" agency decisions which are inconsistent with a statute or which "frustrate the congressional policy underlying a statute").

C. Dispute Over What Constitutes a State Approved Activity

Defendants maintain that the critical flaw in plaintiffs' argument is their assertion that they are participating in state-approved "educational and training activities."

For purposes of this motion for preliminary injunction, defendants assert that plaintiffs are not entitled to relief because the state approval of their training or educational activities was "revoked" when they were terminated from GAIN. Defendants' argument is not well-founded. Defendants admit that

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[10] Thus, contrary to the guarantee provided in the Family Support Act's child care provision, under the HHS regulation the numerous AFDC recipients who reside in areas served by JOBS, but who have been terminated from the program or unable to enter the program, are denied the guarantee of child care assistance. There are no non-JOBS areas in California. Therefore, AFDC recipients all reside in JOBS areas, yet large numbers have been terminated or unable to obtain access to the state sponsored JOBS program, GAIN.

the educational or training activities of plaintiffs seeking preliminary relief were previously approved by the state under California's GAIN program. Defendants also admit that plaintiffs were removed from the program due to program reductions not because their activity was no longer approved.[11] Plaintiffs were terminated because they were not in the target population prioritized to remain in GAIN. See Burke Decl. (notices of termination). The State has approved plaintiffs' educational and training activities pursuant to the only criteria it has developed for that purpose in connection with GAIN.[12] Defendants do not contend that plaintiffs' activities no longer conform to these criteria.

Accordingly, the Court finds that defendants fail to provide continued child care assistance to AFDC recipients participating in state-approved educational or training activities. The Court further finds that plaintiffs have demonstrated a probability of success on the merits in their claim that by denying continued

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[11] See notices of termination attached to Declaration of Tom Burke. For each of the named plaintiffs who were terminated from GAIN, the Notices read in relevant part:

> As of December 31, 1990: Payment for your GAIN Child Care Will Stop. Here's Why: . . . .
> ( ) Your child _____ is 13 years old, which is over the age we can pay for.
> ( ) Your child care provider is your child's parent, legal guardian, or a member of your assistance unit.
> ( ) You are not attending an approved GAIN activity.
> (x) other: Your GAIN Program Services are discontinued.

[12] See Cal. Welf. & Inst. Code § 11322.8 (West Supp. 1991); See also "JOBS and Supportive Service State Plan Preprints," § 4.7-Self-Initiated Education or Training (Defendants' Exhibit).

child care to AFDC recipients who have been terminated from GAIN due to program reductions, but who are continuing to participate satisfactorily in their educational or training activities approved by the state, defendants have violated Section 301 of the Family Support Act of 1988, 42 U.S.C. § 602(g)(1)(A)(i)(II).

IV. IRREPARABLE INJURY AND BALANCE OF HARDSHIPS

Plaintiffs demonstrate that without a preliminary injunction, they will suffer extreme hardship. Lack of child care assistance will force them to choose between dropping out of school and foregoing basic necessities in order to pay for child care. If they drop out of school, plaintiffs not only abandon their hopes of financial self-sufficiency, but they will lose the benefit of the loans, the time, and other resources already invested in their training. See Plaintiffs' Memorandum in Support, at 17-19; see also Rhome Decl., ¶¶ 7, 11; Martin Decl.¶¶ 8-12. Most importantly, plaintiffs will be relegated to dependency for an indefinite period on an AFDC grant which does not even reach the federal poverty level.

In contrast, the only harm defendants may suffer is financial if, pending a full hearing on the merits, they are required to continue providing child care to those plaintiffs who have been or will be terminated from GAIN. Where the government only faces a financial harm, the balance of hardships strongly favors plaintiffs who will be deprived of essential benefits. Lopez v. Heckler, 713 F.2d 1432, 1436-37 (9th Cir. 1983); see also U.S. v. Midway Heights County Water Dist., 695

F. Supp. 1072, 1077 (E.D. Cal. 1988) (where "preventable human suffering figures in the balance," economic hardship to water district is insufficient to justify staying a preliminary injunction); Hurley v. TOIA, 432 F. Supp. 1170, 1176 (S.D.N.Y.), aff'd., 573 F.2d 1291 (2d Cir. 1977) (fiscal crises facing government entities pale before the "brutal need" of recipients for continued benefits).

Without contradicting the evidence of harm presented by the plaintiffs, defendants assert that plaintiffs will not suffer irreparable injury because they continue to receive their basic welfare grant. Yet courts have rejected this very argument, granting preliminary injunctions to address a wide range of financial and emotional injuries similar to those plaintiffs assert here. See e.g. Chalk v. United States Dist. Court Cent. Dist., 840 F.2d 701 (9th Cir. 1988); Sockwell v. Maloney, 431 F. Supp. 1006 (D. Conn. 1976), aff'd, 554 F.2d 1236 (2d Cir. 1977) (granting preliminary injunction to reinstate foster care benefits, despite defendants' claim that plaintiffs' essential needs were met through AFDC grants).

In addition, defendants imply that by granting plaintiffs child care assistance, the court would directly diminish GAIN funds. They assert that plaintiffs seek to deprive "more deserving" or higher priority recipients of their right to GAIN services. As plaintiffs argue, this claim is based on an erroneous construction of the Family Support Act. Plaintiffs do not seek entry or reentry into GAIN at the expense of

participants who are in higher priority groups. They seek only the child care assistance to which they are entitled under the Family Support Act. Funding for this child care assistance is uncapped and separate from JOBS funding. Moreover, fiscal constraints cannot justify the state's failure to comply with its legal obligations.

Thus, the balance of equities here is similar to that present in the numerous cases in which courts have granted preliminary injunctions to protect the statutory rights of public assistance recipients. See, e.g., Lynch v. Rank, 604 F. Supp. 30 (N.D. Cal.), aff'd, 747 F.2d 528 (9th Cir. 1984), modified, 763 F.2d 1098 (9th Cir.1985); Hurley v. TOIA, 432 F. Supp. 1170, 1176 (S.D.N.Y.), aff'd, 573 F.2d 1291 (2d Cir. 1977). Preliminary relief is equally appropriate here. The potential hardship to defendants is outweighed by the harm which will be suffered by plaintiffs in the absence of interim relief. A preliminary injunction is necessary to avoid irreparable harm to plaintiffs who will otherwise be forced to choose between abandoning their education or depriving themselves and their children of basic necessities in order to pay for child care.

Accordingly, the Court finds that the California Department of Social Services' failure to guarantee child care results in probability of irreparable harm to those named plaintiffs and members of the class who have been or will be terminated from GAIN due to program reductions. The balance of hardships tips decidedly in plaintiffs' favor.

V. SECURITY BOND

Although Federal Rule of Civil Procedure 65(c) generally provides that a preliminary injunction will not issue except upon the giving of security, it is not required where plaintiffs are indigent or where considerations of public policy make waiver of a bond appropriate. California ex rel. Van De Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325-026 (9th Cir.), modified, 775 F.2d 998 (9th Cir. 1985). In such circumstances, courts have waived bond on the ground that to require it would effectively deny access to judicial review for indigent people. See e.g., Toussaint v. Rushen, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983); Orantes-Hernandez v. Smith, 541 F. Supp. 351, 385 n.42 (C.D. Cal. 1982); Bartels v. Biernat, 405 F. Supp. 1012, 1019 (E. D. Wis. 1975).

Plaintiffs are indigent persons who rely upon AFDC for the necessities of life. The injunction sought will further the purpose of the Family Support Act and is consistent with public policy. In these circumstances, the Court concludes that considerations of equity dictate that the requested preliminary injunction issue without bond.

The Court declares the foregoing as its findings of fact and conclusions of law under Rule 52(a) of the Federal Rules of Civil Procedure.

Accordingly,

IT IS HEREBY ORDERED that:

(1) Pending judgment in this action, the California

Department of Social Services ("DSS") is enjoined from failing to provide continued child care assistance to AFDC recipients who have been or will be terminated from GAIN due to program reductions, but who continue to participate satisfactorily in their approved educational or training activities. DSS shall reinstate child care assistance forthwith to AFDC recipients whose child care assistance has been discontinued solely because of their termination from GAIN due to program reductions.

(2) This preliminary injunction is issued without bond.

Dated: June 5, 1991.

Judge

ENCLOSURE II

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH MILLER, JUDI COCHRAN, CATHLEEN WILLHITE, TANYA WARKE, ELIZABETH BAN DYKEN, JOANNE LEWIS, DEANNA THIEBERT, ALTHEA FOREMAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

LONNIE CARLSON, in his official capacity as Acting Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; THOMAS HAYES, in his official capacity as Director, California Department of Finance; LOUIS W. SULLIVAN M.D., in his official capacity as Director, United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

No. C-91-0676 SAW

MEMORANDUM AND ORDER

Plaintiffs are a class of California recipients of Aid to Families with Dependent Children ("AFDC") who require child care in order to participate in educational or training activities likely to assist them in securing employment and ultimately removing themselves from welfare. In a Memorandum and Order dated June 7, 1991 ("Memorandum and Order"), this Court issued a preliminary injunction enjoining the California Department of

Social Services ("DSS") from failing to provide continued child care assistance to California recipients who, due to program reductions, have been or will be terminated from the state sponsored employment and training program known as Greater Avenues to Independence ("GAIN"), but who continue to participate satisfactorily in their approved educational or training activities. The Court issued the injunction based on its conclusion that plaintiffs had shown a likelihood of success on the merits of their claim that the Family Support Act of 1988 guaranteed such child care assistance and that the balance of the hardships tipped decidedly in their favor.

Pursuant to Federal Rule of Civil Procedure 62(C), California defendants Lonnie Carlson, DDS, and Thomas Hayes move to stay the preliminary injunction pending appeal. Four considerations govern judicial discretion in ruling on this motion: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the stay applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other interested parties; and (4) where the public interest lies. Hilton v. Braunskill, 481 U.S. 770, 776 (1987). This standard for evaluating the desirability of a stay pending appeal is quite similar to that which the Court employed in deciding to grant the preliminary injunction. See Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir.), stay granted, 463 U.S.. 1328 (1983). Although the Court carefully considered the likelihood of

success on the merits and the balance of the equities in ruling on the motion for preliminary injunction, it will briefly take up defendants' arguments in favor of a stay.

Defendants make no attempt to demonstrate a likelihood of success on appeal, and for the reasons elucidated in the Memorandum and Order, the Court is convinced that they cannot. The sole justification for a stay advanced by the California defendants is the financial hardship imposed on the government by the preliminary injunction. Because of the fiscal difficulties the state is undergoing at present, defendants contend that the injunction "robs Peter to pay Paul." Defendants state that the cost of continuing to pay child care expenses for the approximately 345 persons affected by the preliminary injunction is estimated at $500,000 for the next fiscal year. Burke Decl., ¶ 6. Given limited appropriations, defendants insist that DDS will be able to comply with the injunction only if it decreases expenditures made on behalf of other AFDC recipients who remain in the GAIN program. According to defendants, at least 500 persons will have to be removed from GAIN or not brought into the program in the first place. Id., ¶ 6.

The Court has already rejected that argument in considering defendants' opposition to the preliminary injunction. The obligation to fund child care assistance under the Family Support Act is separate from the obligation to fund programs like GAIN. Child care assistance is not a GAIN expense, and

defendants provide no authority for the proposition that state or federal law requires, or even permits, the use of GAIN appropriations to underwrite the independent child care entitlement.

There is no question but that plaintiffs would endure substantial hardship if the preliminary injunction were stayed and further, that the balance of the equities is decidely in their favor. The record establishes that without the child care benefits, plaintiffs will be forced to choose between dropping out of school or forgoing basic necessities of life. Defendants do not deny the hardship a stay of the preliminary injunction would inflict upon plaintiffs. They acknowledge that at least 276 persons have ceased participating in their education and training activities due to the loss of child care benefits but would resume these activities if benefits were restored. Burke Decl., ¶ 5.

As courts have held in a myriad of cases, fiscal constraints cannot justify the state's failure to comply with its legal obligations, particular where benefits to the poor and disadvantaged are concerned. See, e.g., Lopez, 713 F.2d at 1435-37; United States v. Midway Heights County Water Dist., 695 F. Supp. 1072, 1076 (E.D. Cal. 1988); Hurley v. TOIA, 432 F. Supp. 1170, 1176 (S.D.N.Y.), aff'd, 573 F.2d 1291 (2d Cir. 1977). The Court is persuaded that plaintiffs have demonstrated a likelihood of success on the merits of their claim that under the Family Support Act, they are entitled to the child care

benefits they seek. As this Court has itself observed in the past, irreparable injury is unlikely where the Court has merely ordered the defendants to comply with the law. Dellums v. Smith, 577 F. Supp. 1456, 1458 (N.D. Cal. 1984).

Moreover, the question of where the public interest lies is closely tied to the relative hardships of the parties. The Court appreciates the difficulties inherent in securing the continued funding of various welfare programs, but the Family Support Act unequivocally "guarantees" child care for "each individual" participating in an approved education or training activity. 42 U.S.C.A. § 602(g)(1)(A)(i)(II) (West Supp. 1991). The public interest lies in enforcing that obligation without delay. "Our society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights and privileges." Lopez, 713 F.2d at 1437. Therefore, all four considerations militate against granting a stay.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion for a stay of the preliminary injunction pending appeal is **DENIED.**

Dated: July 25, 1991.

Judge

MILLER V. CARLSON Preliminary Injunction
Child Care Approval Checklist

County _____

Date checklist completed:
Case Name:
Case Number:

Worker Name:
Number:
Telephone:
Address:

DATE REQUEST FOR CHILD CARE RECEIVED _____

Insert "Y" ("yes") or "N" ("no") in all checkboxes.

A. General Eligibility Criteria

If the answer to any of the following is "no," then deny the request for child care payments.

[ ] The individual was involuntarily removed from GAIN solely as a result of cost reductions and has not been reinstated.

[ ] The individual was removed from his/her GAIN education or training activity before it was completed.

[ ] The individual was receiving GAIN-paid child care at the time of his/her removal from GAIN.

B. Criteria for Responding to Requests for Child Care Assistance

If the answer to any of the following is "no," then deny the request for child care assistance.

[ ] The individual is an AFDC recipient.

[ ] The individual's child(ren) meet eligibility requirements:

- o Is in assistance unit or receiving federal foster care or SSI/SSP; and
- o Is under 13 or has a physical/mental condition which requires special care or is under court supervision and meets AFDC age requirements.

[ ] The individual is enrolled or, if attending, is satisfactorily participating in the same approved education or training activity in which he/she was participating when removed from GAIN.

[ ] The individual needs child care in order to attend the approved education or training activity.

[ ] The child care provider meets necessary requirements:
- o Is licensed if required;
- o Is 18 years of age or older if exempt from licensure;
- o Is not the child's parent, legal guardian, or member of the individual's assistance unit.

Case Approved For Child Care Assistance:
[ ] Yes [ ] No

MILLER v. CARLSON Preliminary Injunction
Child Care Request Process

The following describes the process counties should follow upon receipt of a child care request under Miller.

A. INITIAL SCREENING

1. Individual who has been removed from the GAIN Program due to cost reductions requests child care. County documents date child care request is received.

2. County determines and documents individual's eligibility. The county may use the enclosed checklist or a county-developed document. County files the checklist in the individual's case file if determined appropriate.

3. If individual is ineligible for child care payments, county issues denial Notice of Action (NOA).

4. If individual is eligible for child care payments, county proceeds with Process Step B.

B. PROCESSING REQUESTS FOR CHILD CARE ASSISTANCE

1. Individual must provide verification of enrollment or, if attending, continued satisfactory participation in the approved education or training activity. Self-certification under penalty of perjury will not be acceptable documentation. The county maintains verification documentation in case file.

2. County determines if individual is eligible for child care assistance.

   a. If individual cannot produce verification of enrollment, or if attending, continued satisfactory participation, county issues denial NOA.

   b. If individual is eligible for child care assistance, county determines the period of time for which the individual is entitled to child care assistance. If the approved activity is a Self-Initiated Program (SIP) or education activity (post assessment), the county shall adjust the completion date of the activity to account for any delay in activity completion caused by the person's removal from GAIN. For previously approved SIPs, the county shall ensure that the individual still meets the SIP approval criteria from MPP Section 42-772.4.

   c. The county and individual complete the Miller Rights and Responsibilities form. Both the county and the individual sign the Rights and Responsibilities form. A copy of the completed document is retained by the county with the individual receiving the original.

   d. The county issues approval NOA. Payment of child care can only be authorized until completion of the approved activity, and shall not exceed the Family Support Act rate ceiling of 75th percentile rather than the GAIN regional market rate ceiling of 1.5 standard deviations above the mean market rate.

MILLER V. CARLSON Preliminary Injunction Notices of Action

GENERAL INSTRUCTIONS

The child care NOAs and forms that are listed below are to be used solely for individuals affected by the Preliminary Injunction. The Preliminary Injunction provides child care for GAIN participants who were involuntarily discontinued from their education or training activity due to cost reductions but who continued or resumed participation in their approved activity. We have developed this series of NOAs to be used as necessary to implement this injunction. Changes were made to the standard GAIN NOA messages to make them acceptable for this purpose.

MILLER CHILD CARE NOAs:

Please refer to ACL 90-102 for more specific instructions for completion of these NOAs. All other actions necessary to approve or deny the child care and complete these NOAs are described in the implementation letter of August 8, 1991, child care request process and the Child Care Approval Checklist enclosed. Use the TEMP MILLER 50A (9/91), Your Hearing Rights, as the appropriate back for these notices.

M42-750B2 (MILLER) -- Child Care Approval (Prospective)

M42-750D2 (MILLER) -- Child Care Denial (Prospective)

TEMP MILLER 50A -- Your Hearing Rights (8/91) (NEW) (Required, no substitutes permitted.) This notice is to be issued with all Miller child care NOAs.

CONTACT LINE -- This language is inserted in the NOA messages to provide individuals a county phone number to contact if translation is necessary.

State of California
Department of Social Services

Manual Msg. No.. M42-750B2(MILLER)
Action: Approve (Prospective)
Reason: Child Care
Title: Child Care Approval

Auto ID No. :
Flow Chart No. :
Source : MILLER
Regulation Cite: Miller v. Carlson

Form No. :
Effective Date : 08/01/91
Revision Date :

MESSAGE:

As of _____ until _____:

The county has approved your child care payment up to $ _____ per _____ for you to complete your approved education or training activity.

Here's Why:

The county took you out of GAIN and stopped paying for your child care. A court order says the county must pay child care if the child care is needed to take part in the same education or training activity GAIN had approved before you were taken out of GAIN.

Payment for your child care is figured on this notice.

Child(ren): _____

$ _____ rate
x _____ []hours []days []weeks []month
= $ _____ per month.

Your child care provider is: _____.

Your child care is in a:

[]Licensed Family Home []Child care center []Child's home

[]Relative's home []Friend's home []Other:

The rate is what your child care provider charges or the most we can pay, whichever is less. The maximum rate we can pay is lower than the one used for GAIN child care.

Child care payments will be: []Paid back to you []Paid to your provider []Other:

You can only get child care for days you are attending your approved education or training activity: _____.

You must tell us before you change child care providers except in an emergency. We may not be able to approve and pay the new provider.

IF YOU THINK THIS ACTION IS WRONG, YOU CAN ASK FOR A HEARING. "YOUR HEARING RIGHTS" FORM TELLS YOU HOW.

State of Califor...a
Department of Social Services

Manual Msg. No.: M42-750D2(MILLER)
Action: Deny (Prospective)
Reason: Child Care
Title: Child Care Denial

Auto ID No. :
Flow Chart No. :
Source : MILLER
Regulation Cite: Miller v. Carlson

Form No. :
Effective Date : 08/01/91
Revision Date :

MESSAGE:

As of _____:

[] Payment for your child care by _____ is denied.

[] Your request for more child care payments is denied.

Here's why:

[] You are not getting cash aid.

[] You are already getting the most the County can pay.

[] The child care you asked for is not needed to attend your approved education or training activity: _____

[] Your child _____ is not in your AFDC assistance unit and is not receiving federal foster care, or SSI/SSP payments.

[] Your child _____ is 13 or more years old, which is older than we can pay for.

[] You have not provided us records that show your aided child_____, has a physical or mental condition that requires special care.

[] Your aided child_____, is not under court supervision for a behavior or legal problem.

[] The child care provider you wanted must have a license but does not have one.

[] The child care provider is not 18 years of age or older.

[] The child care provider is your child's parent, legal guardian, or a member of your assistance unit.

[] You are not taking part in your education or training activity.

[] You did not show proof that you are taking part in your education or training activity.

[] You are not in the same education or training activity that GAIN had approved.

[] You completed your approved activity before you were taken out of GAIN.

[] GAIN was not paying for your child care when you were taken out of GAIN.

[] Other:

IF YOU THINK THIS ACTION IS WRONG, YOU CAN ASK FOR A HEARING. "YOUR HEARING RIGHTS" FORM TELLS YOU HOW.

INSTRUCTIONS:

Use to deny prospective child care payments under the Miller v. Carlson court order. Enter the date the determination was made and the name of the provider or facility. Check all appropriate boxes and complete all other applicable information. When checking the "other" box, specify the reason for the action.

YOUR HEARING RIGHTS

You have the right to ask for a hearing if you disagree with any County decision regarding your child care payments.

To Ask For a State Hearing

The right side of this sheet tells how.

- You only have 90 days to ask for a hearing.
- The 90 days started the day after we mailed this notice.

While You Wait For A Hearing Decision

If you disagree with the County's decision about your child care payments, and you attend your approved education or training activity, the County will pay child care as follows:

- If we have told you your payments will be lowered, you will get the lower rate.
- If we have told you your payments will be made in a different form, you will be paid in the different form.
- If we have told you your payments will stop; you will not get any more payments, even if you go to your activity.
- If we have denied payments before the hearing, you will not get the requested payments.

You may get free legal help at your local legal aid office or welfare rights group, or from the CCWRO.

Hearing File: If you ask for a hearing, the State Hearing Office will set up a file. You have the right to see this file. The State may give your file to the Welfare Department, the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. (W. & I. Code Section 10950).

HOW TO ASK FOR A STATE HEARING

The best way to ask for a hearing is to fill out this page and send or take it to:

You may also call 1-800-952-5253.

HEARING REQUEST

I want a hearing because of an action by the Welfare Department of _____ County about my

☐ Child Care

☐ Other (list) _____

Here's why: _____

I will bring this person to the hearing to help me (name and address, if known):

I need an interpreter at no cost to me. My language or dialect is: _____

My name: _____

Address: _____

Phone: _____

My signature: _____

Date: _____

TEMP GAIN 60 - MILLER V. CARLSON RIGHTS AND RESPONSIBILITIES (NEW) (8/91) (Required; Substitutes permitted)

This notice is to be provided to all individuals determined to be eligible for prospective child care payments under the Miller Preliminary Injunction. The county completes the "Approved Activity" section to document the activity and duration of the activity for which child care is approved. Both the county and the individual sign this form and the original is provided to the individual. A copy is retained in county files.

MILLER VS CARLSON RIGHTS AND RESPONSIBILITIES

The court has ruled that persons who were taken out of GAIN because the County did not have enough money to serve everyone, can get money for child care. These persons may get child care money, if the child care is needed to take part in the same education or training activity GAIN had approved before the person was taken out of GAIN. Only child care money is given under this court order.

YOUR RIGHTS AND RESPONSIBILITIES

You have the right to:

- Receive payment for child care if you need it to take part in your approved education or training activity. You will get child care payments until you complete your approved education or training activity.
- Ask for a hearing if you disagree with the County's decision on your child care payments or your education or training activity.
- Ask for help from the local legal aid office or welfare rights group at any time regarding your child care payments.
- Receive notices that tell you what child care you will get and when it changes or stops.
- Receive child care payments for 12 months if you lose your AFDC because you get a job. Ask your county worker about the Transitional Child Care program.

You must:

- Be an AFDC recipient in order to get the child care payments.
- Choose and arrange for the child care. The county will help you.
- Tell the county worker right away of changes in your child care. This includes changes in child care providers. If you do not tell the county in advance, the county may not be able to pay for the services that change.
- Pay back for any child care payments you got but you did not need or you were not eligible for.
- Attend the education or training activity that GAIN had approved for you.
- Take part in your education or training activity in order to continue to get child care. This includes making good progress in the activity.
- Report your attendance in your education or training activity.

WHAT HAPPENS IF YOU DO NOT TAKE PART IN YOUR EDUCATION OR TRAINING ACTIVITY?

- If you do not take part, the county will stop giving you child care payments but you will not lose cash aid.

WHAT CHILD CARE CAN YOU GET?

- You can get child care for children who are in your AFDC case. The children must be under age 13, or disabled or under court supervision.
- You can also get child care for children in your home who are not in your AFDC case if the reason they are not in your case is because you get foster care payments or social security payments for them.
- You can choose the kind of child care you want, like a child care center, relatives, friends or neighbors.
- The child care provider must be licensed, if required.
- The child care provider must be 18 years of age or older if exempt from licensing.
- We can not pay if you choose somebody in your AFDC case, or the child's legal guardian or parent to care for your child.
- Payments may be made at a maximum rate that is lower than the one used for your GAIN child care.

YOUR APPROVED ACTIVITY

I, _____ (NAME), have an approved education or training activity and need child care to be in that activity. My approved activity is _____.

I expect to complete my activity at _____ (LOCATION).

by _____ (DATE).

I understand that if I have not done so already, I must give the county a copy of my activity schedule by _____ (DATE). I must tell my worker if any changes are made.

I agree to give proof of my attendance in my activity to my worker by _____ (DATE). I understand that if I do not provide proof of my attendance by those dates I may not get child care payments.

Comments:

_____

_____

CERTIFICATION

I have read and understand these rights and responsibilities. I have received a copy of this form to keep. I know that I have certain rights and responsibilities and that I must meet all my responsibilities so that I can get child care payments.

SIGNATURE	DATE
COUNTY WORKER'S SIGNATURE	DATE

CONTACT LINE FOR LANGUAGE SERVICES

- If you do not understand this, please call _____ at _____.

- Si no entiende esto, por favor llame a _____ al _____.
  (SPANISH)

- បើលោកអ្នកពុំយល់សេចក្តីសំបុត្រនេះទេ សូមទូរស័ព្ទ _____ តាមលេខ _____
  (CAMBODIAN)

- ຖ້າຫາກທ່ານບໍ່ເຂົ້າໃຈກ່ຽວກັບເຣື່ອງນີ້, ໂປຣດໂທຣຫາ _____ ຕາມເລກ _____.
  (LAO)

- Nếu quý vị không hiểu nội dung văn bản này, xin điện thoại cho _____ ở số _____
  (VIETNAMESE)

- 假如你不瞭解的話，請打電話給_____/_____.
  （姓名） （電話號碼）
  (CHINESE)